**Shane Steel Processing, Inc. *and* Local 771, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO.** Cases 7–CA–47710 and 7–CA–48016

May 31, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS KIRSANOW AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the consolidated amended complaint and failed to file an answer to the reinstated consolidated amended complaint. Upon a charge and an amended charge filed by the Union in Case 7–CA–47710 on July 26 and September 22, 2004, respectively, and a charge in Case 7–CA–48016 filed on October 20, 2004, the General Counsel issued the consolidated amended complaint on November 18, 2004, against Shane Steel Processing, Inc. (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the Act.[1] On December 10, 2004, the Respondent filed an answer to the consolidated amended complaint.

On January 19, 2005, the Regional Director for Region 7 issued an order conditionally approving the withdrawal of charges and dismissing the consolidated amended complaint as a result of a "private" non-Board settlement agreement between the Union and the Respondent. The Regional Director's order provided that the charges and consolidated amended complaint were subject to reinstatement for further proceedings in the event that the Union produced evidence that the Respondent had failed to comply with the undertakings in the private settlement.

On May 25, 2005, the Regional Director issued an order setting aside the January 19, 2005 order and reinstating the consolidated amended complaint, on the ground that the Respondent had not complied with the terms of the private settlement. Specifically, the Regional Director asserted that the Respondent had not returned the dental benefits, wages, health benefits, or optical benefits to the status quo, as was required by the settlement. The Respondent did not refute these assertions.

[1] The consolidated amended complaint issued on November 18, 2004, also included 8(a)(3) and (1) allegations arising from a charge and amended charge in Case 7–CA–47748, filed by Mark Moore, Sr. On January 14, 2005, the Regional Director for Region 7 issued an Order Severing Case 7–CA–47748 from Cases 7–CA–47710 and 7–CA–48016 and an order deferring Case 7–CA–47748 to arbitration.

By letter dated August 5, 2005, the Respondent withdrew the answer that it had previously filed to the consolidated amended complaint.

On February 17, 2006, the General Counsel filed a Motion for Default Judgment with the Board. On February 22, 2006, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated amended complaint affirmatively stated that unless an answer was filed, all the allegations in the consolidated amended complaint could be considered admitted. Here, although the Respondent filed an answer on December 10, 2004, it subsequently withdrew its answer by letter dated August 5, 2005. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the consolidated amended complaint must be considered to be true.[2]

Accordingly, based on the withdrawal of the Respondent's answer to the consolidated amended complaint, and in the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with its headquarters and place of business at 17495 Malyn, Fraser, Michigan, has been engaged in the manufacturing and processing of commercial steel bars.

During 2003, the Respondent, in conducting its operations described above, derived gross revenues in excess of $500,000, and purchased and received at its Fraser facility goods valued in excess of $50,000 directly from points located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the International Union, United

[2] See *Maislin Transport*, 274 NLRB 529 (1985). Thus, the Respondent has not filed an answer to the reinstated consolidated amended complaint.

Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the International Union) and the Charging Party Union are labor organizations within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act, and agents of the Respondent within the meaning of Section 2(13) of the Act:

| | |
|---|---|
| John Hartley | President |
| Michael Bruno | Plant Manager |

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees, including shipping and receiving employees, employed by the Respondent at its facility at 17495 Malyn, Fraser, Michigan; but excluding all office clerical employees, and guards and supervisors as defined in the Act.

Since about March 9, 1976, and at all material times, based on Section 9(a) of the Act, the International Union has been the exclusive collective-bargaining representative of the unit and has been so recognized by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from March 17, 2000 to March 17, 2002. Since about March 18, 2002, the International Union and the Respondent have continued to abide by the wages, hours, and terms and conditions of employment embodied in the collective-bargaining agreement that expired about March 17, 2002.

The International Union has assigned its representative responsibilities with respect to the unit to the Charging Party Union.

On about the dates listed below, the Respondent, unilaterally and without affording the Union notice and a meaningful opportunity to bargain, changed the unit employees' wages, hours, benefits, and other terms and conditions of employment in the following ways:

(1) May 21, 2004: eliminated the Respondent's 401(k) match;

(2) May 31, 2004: reduced wages by 10 percent, and eliminated dental benefits and optical benefits;

(3) June 1, 2004: changed medical benefits, and eliminated the perfect attendance bonus, rides to the medical clinic and/or mileage reimbursement, and prescription co-pay reimbursements;

(4) August 3, 2004: changed the attendance policy;

(5) October 8, 2004: eliminated the 401(k) program.

The subjects set forth above relate to wages, hours, benefits, and other terms and conditions of employment of the unit, and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct set forth above without affording the Union a meaningful opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct on the unit.

## CONCLUSIONS OF LAW

1. By unilaterally changing the terms and conditions of employment of the unit employees in the manner set forth above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees, in violation of Section 8(a)(5) and (1) of the Act.

2. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to bargain collectively and in good faith with the Union by unilaterally changing the wages, hours, benefits, and other terms and conditions of employment of its unit employees, we shall order the Respondent to restore the status quo and to make its unit employees whole, as set forth below.

The Respondent shall reestablish the 401(k) plan, make all required payments that have not been made since about May 21, 2004, including any additional amounts due the plan in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), and make the unit employees whole for any loss of interest they may have suffered as a result of the failure to make such payments.

In addition, the Respondent shall restore the unit employes' dental, optical, and medical benefits, and make all required benefit fund payments or contributions, if any, that have not been made since about May 31, 2004, including any additional amounts applicable to such

payments or contributions as set forth in *Merryweather Optical Co.*, supra. Further, the Respondent shall reimburse unit employees for any expenses ensuing from the Respondent's failure to continue their health care benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, with respect to the Respondent's remaining unilateral changes, including its reduction of wages and its elimination of the perfect attendance bonus, the Respondent shall make the unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Shane Steel Processing, Inc., Fraser, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 771, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, as the exclusive representative of the employees in the following appropriate unit by unilaterally changing employees' wages, hours, benefits, and other terms and conditions of employment, without affording the Union notice and a meaningful opportunity to bargain. The unit is:

> All full-time and regular part-time production and maintenance employees, including shipping and receiving employees, employed by the Respondent at its facility at 17495 Malyn, Fraser, Michigan; but excluding all office clerical employees, and guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the status quo that existed in May 2004 prior to its unilateral changes to employees' wages, hours, benefits, and other terms and conditions of employment, including dental, optical, and health benefits, and the 401(k) plan, until the Respondent bargains with the Union in good faith to an agreement or an impasse.

(b) Reestablish the 401(k) plan, make all required payments that have not been made since about May 21, 2004, and make the unit employees whole for any loss of interest they may have suffered as a result of the unilateral failure to make such payments, in the manner set forth in the remedy section of this decision.

(c) Restore the unit employees' dental, optical, and medical benefits, make all required benefit fund payments or contributions, if any, that have not been made since about May 31, 2004, and reimburse unit employees for any expenses resulting from its unlawful failure to continue their health care benefits, with interest, in the manner set forth in the remedy section of this decision.

(d) Make unit employees whole by paying them the wages and other benefits that have not been paid since May 21, 2004, with interest, in the manner set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Fraser, Michigan, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 21, 2004.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at-

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

testing to the steps that the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### National Labor Relations Board
### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 771, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL–CIO, as the exclusive representative of the employees in the following appropriate unit by unilaterally changing employees' wages, hours, benefits, and other terms and conditions of employment, without affording the Union notice and a meaningful opportunity to bargain. The unit is:

All full-time and regular part-time production and maintenance employees, including shipping and receiving employees, employed by us at our facility at 17495 Malyn, Fraser, Michigan; but excluding all office clerical employees, and guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore the status quo that existed in May 2004 prior to our unilateral changes to your wages, hours, benefits, and other terms and conditions of employment, including dental, optical, and health benefits, and the 401(k) plan, until we bargain with the Union in good faith to an agreement or an impasse.

WE WILL reestablish the 401(k) plan, make all required payments that have not been made since about May 21, 2004, and make the unit employees whole for any loss of interest they may have suffered as a result of the unilateral failure to make such payments.

WE WILL restore the unit employees' dental, optical, and medical benefits, make all required benefit fund payments or contributions, if any, that have not been made since about May 31, 2004, and reimburse unit employees for any expenses resulting from our unlawful failure to continue their health care benefits, with interest.

WE WILL make unit employees whole by paying you the wages and other benefits that have not been paid since May 21, 2004, with interest.

SHANE STEEL CORPORATION